IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 81 OF 2005

Shri Philip Victor D'Souza,
presently lodged in Judicial
Custody, Mapusa. ... Applicant

versus

State, through the Public Prosecutor. ... Respondent

Mr. D. M. Dhond, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : V. M. KANADE, J.

DATE : 8TH JUNE, 2005.

P.C.:-

Heard the learned Counsel appearing on behalf of the Applicant.

It is stated that the Applicant was arrested on 14th January, 2005 in connection with an offence registered against

him under Sections 328, 304, 506(II) and 201 of the Indian Penal Code. The prosecution case, in brief, is that the Applicant on or about 8th January, 2005 to 9th January, 2005 took the victim foreigner girl in his car and kept her in a flat in Hotel Osborne, Calangute and administered superfying drugs to her as a result of which she expired. It is further the case that the Applicant engaged two witnesses and shifted the dead body of the victim foreigner girl and kept it on the road.

The learned Counsel appearing on behalf of the Applicant submits that a charge-sheet has been filed and the Applicant is in jail since 14th January, 2005. The learned Counsel submitted that the Applicant is a goan and is a permanent resident of Goa. There is no evidence against him to suggest that he administered the drugs to the victim foreigner girl. Further, it is submitted that the Post Mortem Report does not show what is the exact cause of death. He further stated that the two foreigners who had seen the Applicant in the company of the victim girl are no longer staying in Calangute and, therefore, there is no question of tampering with the evidence. The learned Counsel further submitted that the prosecution has relied on an earlier case which was filed against him under Section 376 of

the Indian Penal Code. The learned Counsel has relied on a Judgment of the Sessions Court in the said case where he was acquitted by the Sessions Judge. It is submitted that there was no offence proved against the Applicant under the said case and, therefore, it cannot be said that there are antecedents so far as the Applicant is concerned.

It is not possible to accept the submission made by the learned Counsel on behalf of the Applicant. A charge-sheet has been filed and there are two witnesses who have seen the Applicant along with the deceased before she died. Further the fact remains that a Criminal Case was filed against the present Applicant under Section 376 of the Indian Penal Code though the Applicant was thereafter acquitted by the trial Court. After perusing the Judgment and Order of the trial Court in the said case it can be seen that the prosecutrix in the said case was not examined. Therefore, the fact remains that a Criminal Case against the present Applicant was filed.

Under these circumstances, I do not think this is a fit case for grant of Bail. The application for Bail is rejected.

The trial Court is further directed to expedite the

hearing of the Criminal Case. If, the trial is not completed within a period of six months liberty is granted to the Applicant to file fresh application for Bail.

V. M. KANADE, J.

RD.